

## **Minutes of the Special and Regular Meeting of September 25, 2007**

One Twin Pines Lane, Belmont, California AND

225 Main Street, Grand Junction, CO 81501 (teleconference location of Councilmember Warden)

### **SPECIAL MEETINGS**

#### **CLOSED SESSION - 6:00 P.M.**

- A. Conference with Real Property Negotiator, Jack Crist, pursuant to G.C. Section 54956.8: 1 parcel, APN 045-380-010, concerning price and terms of payment
- B. Conference with Legal Counsel, Anticipated Litigation, Significant Exposure to Litigation, Government Code section 54956.9(b), One Case, regarding claim of Schoening et al. re: Marburger Road.
- C. Conference with Labor Negotiator, Jack Crist, pursuant to Government Code Section No. 54957.6: MMCEA
- D. Conference with Legal Counsel, Anticipated Litigation, Significant Exposure to Litigation, Government Code section 54956.9(c), One Case

Attended by Councilmembers Dickenson, Feierbach, Mathewson, Lieberman, City Manager Crist, City Attorney Zafferano, Human Resources Director Sam, Public Works Director Davis, Community Development Director de Melo, and Police Chief Mattei. Councilmember Warden was absent and City Clerk Cook was excused from attending.

**ADJOURNMENT** at this time, being 7:35 P.M.

**Terri Cook**

**City Clerk**

This meeting not tape recorded or videotaped.

## **REGULAR MEETING**

### **CALL TO ORDER 7:40 P.M.**

### **ROLL CALL**

COUNCILMEMBERS PRESENT: Dickenson, Lieberman, Feierbach, Warden (arr. via phone, 8:55 P.M.), Mathewson

COUNCILMEMBERS ABSENT: None

Staff Present: City Manager Crist, City Attorney Zafferano, Community Development Director de Melo, Police Chief Mattei, Finance Director Fil, Human Resources Director Sam, Public Works Director Davis, Co-Interim Parks and Recreation Director Ourtiague, City Clerk Cook.

### **PLEDGE OF ALLEGIANCE**

Led by City Clerk Cook.

### **REPORT FROM CLOSED SESSION**

City Attorney Zafferano stated that direction had been given but no action taken during the closed sessions held earlier.

### **SPECIAL PRESENTATIONS**

#### **Proclamation Declaring October as National Arts and Humanities Month**

Mayor Feierbach presented the Proclamation.

**Julie Fellers**, Peninsula Arts Council, accepted the proclamation on behalf of all the arts organizations located in Belmont. She noted that this event is celebrated every October.

**Shulamit Hoffman**, Viva la Musica Director, thanked the City for being included in the proclamation. She announced Viva la Musica's upcoming concert on December 1<sup>st</sup> and 2<sup>nd</sup> at St. Mark's Church in Belmont, and noted that the choir would be singing for the lighting of the holiday tree in Twin Pines Park on December 5<sup>th</sup>.

#### **Presentation by Belmont Community Players**

Members of the Belmont Community Players invited the community to attend the upcoming melodrama, which opens in mid-October.

#### **COUNCIL MEMBER COMMENTS AND ANNOUNCEMENTS**

Mayor Feierbach announced that the Farmer's Market would now be held year-round. She also announced the upcoming City Council Candidate Forums, to be held at the Belmont Library on September 26<sup>th</sup> and October 4<sup>th</sup>.

Councilmember Mathewson noted that the candidates' first campaign financing filing deadline was September 27<sup>th</sup>.

#### **PUBLIC COMMENTS AND ANNOUNCEMENTS**

**Mallory Barr**, Notre Dame de Namur University (NDNU) Student Body President, stated that NDNU students feel like unwelcome guests in Belmont. Neighbors were invited to a welcome barbecue, and the police were called because of noise issues. She noted that the students and the University are trying to reach out to their neighbors.

**Carolyn Archibald**, NDNU Programming Board, expressed concerns regarding NDNU students not feeling welcome. She noted the University is not being taken into consideration when big decisions are being made in the City. The atmosphere is antagonistic. Neighbors' complaints are unfounded. She cited examples of the police being called for noise issues that were not related to the NDNU campus.

Mayor Feierbach noted that all the parties are attempting to work on solutions to these issues.

**RECESS: 7:55 P.M.**

**RECONVENE: 8:05 P.M.**

### **AGENDA AMENDMENTS**

Mayor Feierbach noted that some items on the agenda may be taken out of order until Councilmember Warden is able to join the meeting via teleconference.

City Clerk Cook noted that members of the public requested the removal of Items 4-D (Resolution Amending the Neighborhood Traffic Calming Program) and 4-E (Resolution Approving Installation of the Speed Humps at Three Locations on Monserat Avenue between Cipriani Boulevard and Buena Vista Avenue) from the Consent Calendar for separate consideration. Councilmember Dickenson requested the removal of Item 4-B (Resolution Approving the Solid Waste, Recyclable Materials, and Organic Materials Collection Services Outlined in the South Bayside Waste Management Authority (SBWMA) August 2, 2007 Draft Request for Proposals) for separate consideration.

### **ITEMS APPROVED ON CONSENT CALENDAR**

**Approval of** Minutes of Special and Regular Meeting of August 14, 2007

**Approval of** Resolution 9920 Establishing a Beautify Belmont Awards Program

**Approval of** Resolution 9921 Authorizing Belmont to establish a Priority Development Area (PDA) Designation under the Metropolitan Transportation Commission/Association of Bay Area Governments FOCUS Program

**Approval of** Resolution 9922 Approving a Permanent Encroachment Agreement to Allow Retaining Walls within the Public Right-of-Way at 1924 Arbor Avenue

**Approval of** Resolution 9923 Amending the City Treasurer's Stipend/Benefits

**Approval of** Resolution 9924 Approving the Lease with Option to Purchase the Remnant Parcel Lying East of Island Parkway, North of Ralston Avenue and Adjacent to the Property Leased by Autobahn Motors from Lucas Trust Properties, LLC (located between APN 040-360-400 and APN 040-360-480) with Lucas Trust Properties, LLC

**ACTION:** On a motion by Councilmember Dickenson, seconded by Councilmember Mathewson, the Consent Agenda was unanimously approved, as amended, by a show of hands (4-0, Warden absent).

## **ITEMS REMOVED FROM CONSENT CALENDAR FOR SEPARATE CONSIDERATION**

**Resolution Approving the Solid Waste, Recyclable Materials, and Organic Materials Collection Services Outlined in the South Bayside Waste Management Authority (SBWMA) August 2, 2007 Draft Request for Proposals (RFP) for Collection Services; Approving the Contract Terms Detailed in the SBWMA'S August 2, 2007 Draft Uniform Franchise Agreement for Solid Waste, Recyclable Materials, and Organic Materials Collections Services; Approving the Scope of Services in the SBWMA's August 2 2007 Draft RFP for the Operation of the Shoreway Recycling and Disposal Center (SRDC); and Approving the Contract Terms in the SBWMA's August 2, 2007 Draft Agreement for the Operation of the Shoreway Recycling and Disposal Center**

Public Works Director Davis clarified that the City is undertaking a parallel process in order to explore the feasibility of Belmont doing its own solid waste collection. He noted that the resolution before the Council this evening is for SBWMA's process relative to the franchise agreement. There is no impact on Belmont's parallel process.

Councilmember Dickenson clarified that he only wished to call attention to the process.

**ACTION:** On a motion by Councilmember Dickenson, seconded by Councilmember Mathewson, Resolution 9925 Approving the Solid Waste, Recyclable Materials, and Organic Materials Collection Services Outlined in the South Bayside Waste Management Authority (SBWMA) August 2, 2007 Draft Request for Proposals (RFP) for Collection Services; Approving the Contract Terms Detailed in the SBWMA'S August 2, 2007 Draft Uniform Franchise Agreement for Solid Waste, Recyclable Materials, and Organic Materials Collections Services; Approving the Scope of Services in the SBWMA's August 2 2007 Draft RFP for the Operation of the Shoreway Recycling and Disposal Center (SRDC); and Approving the Contract Terms in the SBWMA's August 2, 2007 Draft Agreement for the Operation of the Shoreway Recycling and Disposal Center was unanimously approved by a show of hands (4-0, Warden absent).

## **Resolution Amending the Neighborhood Traffic Calming Program**

**Gladwyn D'Souza**, Belmont resident, stated that he has brought concerns regarding vehicle speed in his own neighborhood to the City's attention. He suggested using speed cushions rather than speed humps, since bicycles have difficulties with speed humps.

Public Works Director Davis clarified that the proposed amendment to the Program allows for more flexibility to install speed humps on roads with higher slopes in order to address the issue of emergency vehicles driving on a primary route. He noted that speed cushion is a term used by a vendor and is not a technical term.

**ACTION:** On a motion by Councilmember Mathewson, seconded by Councilmember Dickenson, Resolution 9926 Amending the Neighborhood Traffic Calming Program was unanimously approved by a show of hands (4-0, Warden absent).

**Resolution Approving Installation of the Speed Humps at Three Locations on Monserat Avenue between Cipriani Boulevard and Buena Vista Avenue**

**Barry Rowland**, Belmont resident, thanked the City for helping to make these speed humps a reality. He objects to the requirement that the residents pre-pay all the money prior to the installation. In response to Council questions, he noted that only one resident voted no on the project, and the neighborhood poll resulted in a 90 percent approval rate, far exceeding the two-thirds required.

Councilmember Lieberman suggested that the Council adopt the resolution and allow staff to work out the details of payment.

Public Works Director Davis noted that the program requires that the burden be on the residents who want the traffic calming devices. He noted that the material will be ordered immediately, but the money is required prior to installation.

City Manager Crist stated that the City could assist with the collection of monies.

**Tom Mansfield**, Belmont resident, requested additional information regarding type, length and height of the speed hump. He expressed concern regarding the installation of one of the humps directly in front of his home, but he supports the installation.

In response, Public Works Director Davis provided details as requested.

**ACTION:** On a motion by Councilmember Lieberman, seconded by Councilmember Dickenson, Resolution 9927 Approving Installation of the Speed Humps at Three Locations on Monserat Avenue between Cipriani Boulevard and Buena Vista Avenue was unanimously approved by a show of hands (4-0, Warden absent).

## **HEARINGS**

### **Public Hearing to Consider Implementation of an Automated Red Light Photo Enforcement Program (item taken out of order on agenda)**

Police Chief Mattei noted that the decision to implement an automated red light camera program requires a public hearing.

Police Sergeant Halleran explained how red light cameras operate. He described the process that Belmont utilized for selecting the vendor and the camera locations. Locations are usually determined by those which have the highest traffic volume and the most violations. He noted that many cities average a 12 percent decrease in the number of violations following installation, and some cities experience an even higher level of reduction in violations. He described the equipment and where it is installed, and he clarified that Belmont would be obtaining the smallest equipment available on the market. He described the fee structure and how fines are allocated. He also described how the process works, and noted that the citation review can be performed by a non-sworn officer. He clarified that tonight's action would be to implement the program, and that a contract with a vendor would be a separate action taken at a subsequent meeting.

Mayor Feierbach expressed concern regarding the timing of the yellow light and its affect on safety.

Police Sergeant Halleran explained that the California Vehicle Code establishes the timing of yellow lights. He noted that other cities with red light camera programs have not experienced an increase in rear-end accidents.

**Wade Bettisworth**, RedFlex Company, stated that his company has implemented 50 programs State-wide. Most programs generate additional revenue above the costs to administer the program.

Mayor Feierbach opened the Public Hearing. No one came forward to speak.

**ACTION:** On a motion by Councilmember Dickenson, seconded by Councilmember Mathewson, the Public Hearing was unanimously closed by a show of hands (4-0, Warden absent).

Councilmember Dickenson recommended that any additional revenues exceeding costs be allocated to additional personnel.

**ACTION:** On a motion by Councilmember Dickenson, seconded by Councilmember Lieberman, and unanimously approved by a show of hands (4-0, Warden absent) to implement an automated red light photo enforcement program.

**RECESS: 8:50 P.M.**

**RECONVENE: 8:55 P.M.**

(At this time, being 8:55 p.m., Councilmember Warden joined the meeting via teleconference.)

**Public Hearing to Re-Introduce Ordinance Regulating Secondhand Smoke and Amending the Belmont Municipal Code**

City Attorney Zafferano stated that this ordinance was being returned to the Council for re-introduction in order to clarify two issues, and to discuss the educational process. The ordinance as proposed would allow owners of multi-unit housing to designate an outdoor location where smoking is permitted, as long as it is farther than 20 feet from a doorway or window, and 20 feet from areas where children congregate, such as swimming pools. In addressing business and public areas, the ordinance as proposed would allow smoking 20 feet from an operable door or window, 20 feet from an outdoor area where smoking is prohibited, and is also permitted if the smoker is just passing through prohibited outdoor space. He recommends that the Council consider making definitions the same for multi-unit housing and for businesses.

City Attorney Zafferano clarified the language related to the 14-month phase-in for the effective date of the ordinance on multi-unit dwellings. He stated that this phase-in period affects both rented and owner-occupied dwellings that meet the housing criteria. If any property changes hands, whether through sale or a new tenant, that unit becomes a non-smoking unit. Likewise, if an existing lease is



renewed prior to the expiration of the 14-month phase-in period, the verbiage regarding the smoking prohibition would need to be included in the new lease, but the tenant would still be able to smoke until the end of the phase-in period. However, all new lease agreements entered into prior to the 14-month phase-in period would be subject to the ordinance, and the new lease agreement must contain the no-smoking clause.

City Attorney Zafferano stated that a staff committee is working on an educational program, and he described the various methods by which outreach would be made.

In response to Council questions, City Attorney Zafferano explained that tenants cannot get another tenant evicted. The ordinance does not require landlords to evict, although the option is available under the terms of the lease agreement. He clarified that a tenant can file a nuisance claim against another tenant. Most leases contain provisions that require all tenants to comply with all laws, including the noise ordinance, and landlords have the ability to evict if tenants do not comply.

Mayor Feierbach expressed support for a proactive outreach program to include mediation and tools available for smoking cessation. City Manager Crist stated that staff's approach would be educational, and he noted that several of the nonprofit agencies have offered assistance with this.

Discussion ensued regarding eviction procedures.

Councilmember Lieberman expressed concern that a tenant could be evicted based on indirect information. City Attorney Zafferano clarified that a landlord can rely on third-party testimony to evict, but he noted that eviction procedures are costly, and landlords are likely to attempt other remedies. He further clarified that the proposed ordinance requires that the complainant only has to prove that smoking has occurred, not that the smoke has caused harm.

Councilmember Lieberman noted that there is a material difference between the smoke and the noise ordinances. City Attorney Zafferano responded that noise does not cause health problems like smoke does.

Mayor Feierbach reopened the Public Hearing.

**Ralph Morales**, American Lung Association, expressed support for the proposed ordinance. He commented that this process has been very democratic. He noted that the Lung Association would continue to work with the City on implementation of the ordinance.

**Joe Iffla**, Belmont resident and property owner, asked whether other cities have similarly stringent regulations.

City Attorney Zafferano clarified that some cities have differing levels of stringency in different areas of their ordinances.

**Joe Iffla** continued that this is a volatile issue and expressed concern regarding the cost of litigation. He also noted that apartment owners could be liable if they do not react to the complaint.

City Attorney Zafferano noted that there has been no threat of litigation to date.

**Suzanne Francis**, Belmont resident, expressed concern regarding the vagueness of the ordinance, and that tenants would be using the ordinance against their neighbor. She also expressed concern for the impact on the police department, and that this would drive out long-term tenants.

City Attorney Zafferano noted that Council has given direction regarding the process and level of enforcement. He also clarified that landlords are not liable for a breach in the ordinance.

**Gabriela Lemus**, San Mateo County Tobacco Prevention Program, noted that free nicotine patches are available to all who attend a smoking cessation class.

**ACTION:** On a motion by Councilmember Dickenson, seconded by Councilmember Mathewson, the Public Hearing was unanimously closed by a roll call vote.

Councilmember Dickenson stated that a legitimate request to address a second-hand smoke issue turned into something else. He expressed concern regarding the amount of resources that have been expended to date on this issue, as well as future resources for enforcement and education. Many residents have expressed concern regarding this ordinance, and he cannot support it as proposed.

Councilmember Mathewson stated that the protection of health and safety is the job of the City Council. There is a need to breathe clean air.

Councilmember Lieberman concurs with Councilmember Dickenson regarding the original request. There will now be a 14-month wait before some will benefit from the ordinance. The issue was expanded by the City Council, not the public. He noted that there are more negative than positive responses received. He expressed support for some aspects of the ordinance, such as the smoking prohibition in parks and outdoor eating areas, but the ban on smoking in multi-unit housing is a concern. This has been a divisive issue, and he would prefer to build on the areas where the entire Council is in concurrence.

Councilmember Warden stated that this arose from a second-hand smoke issue in high-density housing. Council has received more positive than negative feedback. Apartments are businesses, and tenants the customers. Landlords are not likely to evict, as eviction is bad for business. Noise does not kill people, but people can be evicted for violating the noise ordinance. Many laws are in place to protect people, and Council should not ignore the danger of second-hand smoke exposure. The City often receives threats of lawsuits which never materialize. Many compromises were made in the formation of the proposed ordinance.

Mayor Feierbach expressed concern regarding infants who are subject to second-hand smoke. She acknowledges that it is difficult to quit smoking. Her focus is on outreach.

**ACTION:** On a motion by Councilmember Mathewson, seconded by Councilmember Warden, and approved by a roll call vote (3-2, Lieberman/Dickenson no) to introduce an ordinance Regulating Secondhand Smoke, to include the additional clarification language as outlined by the City Attorney, to waive further reading and to set the second reading and adoption for October 9, 2007.

**Appeal of the Planning Commission Decision Conditionally Approving a Floor Area Exception and Single Family Design Review for Property Located at 2850 Belmont Canyon Road**

Senior Planner di Donato provided a history of the home. He described the unpermitted additional square footage and how it was made known to City staff. He outlined the Planning Commission review, and the issues raised by the Commission. He noted that the additional floor area was approved with conditions. He reviewed the appellant's issues relative to the conditions of approval, and the responses provided by staff. There has been no abuse of discretion by the Planning Commission. He outlined the options to be considered by the Council.

In response to Councilmember Warden, Senior Planner di Donato explained the process by which the auxiliary structure was permitted to be built.

Mayor Feierbach opened the Public Hearing.

**Eric Somers**, on behalf of the Appellant, stated there are no structural issues with the home. He noted that a window could be added in the media room to satisfy the ventilation requirement for that room. He stated that a neighbor complained regarding the auxiliary structure, and an electrical permit was obtained. There were no other violations or permits required as determined by City staff. The media room did not require excessive grading, nor was there a separate egress required. The pantry is too small to be turned into a bedroom as it is constructed. The tree house is accessible only through the property. He is prepared to lower the ceiling on that building, if necessary.

**ACTION:** On a motion by Councilmember Dickenson, seconded by Councilmember Lieberman, the Public Hearing was unanimously closed by a roll call vote.

Councilmember Mathewson expressed concern regarding the process of approval. The applicant knew the areas were unpermitted, since the contractor is experienced and would have known that the floor area had increased by 20 percent. The mistake is the size of a two-car garage. The applicant desires to legalize the unpermitted work in order to sell the property. If he were still on the Planning Commission, he would have supported the removal of the media room and the pantry, and the lowering of the ceiling on the auxiliary building. He is concerned regarding the impact of the additional square footage on the neighborhood. He does not like to reward bad behavior. He supports upholding the Planning Commission's decision.

Councilmember Dickenson noted that there is a great deal of illegal construction throughout the city. He commends the applicant for coming forward, but noted that other violators have not. He supports the project as presented.

Councilmember Lieberman stated that the City should have caught the error. He supports legitimizing the unpermitted work. He recommended the payment of back taxes as a condition of approval.

Councilmember Warden stated that the findings of fact are the most important issue on these types of applications. Even with the additional square feet, the floor area ratio is below the neighborhood average. He usually upholds the Planning Commission, but he can make the findings for approval of the project.

**MEETING EXTENSION** at this time, being 10:30 P.M., on a motion by Councilmember Mathewson, seconded by Councilmember Dickenson, the meeting was unanimously extended to 11:00 P.M. on a roll call vote.

Mayor Feierbach noted that all the unpermitted construction is internal to the structure. She concurs that there is much illegal construction in Belmont. She can support the project with the addition of the window, as noted, and the payment of back taxes.

In response to Councilmember Lieberman, Community Development Director de Melo explained the difference between a floor area exception and a variance, including the fact that exceptions are permitted only in certain zoning areas. He noted that the exception requires a lower threshold with regard to the findings to be made. He stated that the Hillside Residential zoning standards encourages floor area transfers.

In response to Councilmember Lieberman's question regarding precedence, City Attorney Zafferano noted that approval of the project will increase the average floor area ratio in the neighborhood, which would be used for future comparisons.

**ACTION:** Councilmember Mathewson made a motion, seconded by Councilmember Lieberman, to uphold the Planning Commission decision. This motion failed by a roll call vote of 2-3 (Councilmembers Dickenson, Warden and Feierbach no).

**ACTION:** Councilmember Dickenson made a motion, seconded by Councilmember Warden, to overturn the Planning Commission decision and approve the project as built, said motion to include the installation of a window in the media room as part of the conditions of approval.

Councilmember Lieberman requested that the motion include as a condition the payment of property taxes retroactive to when the illegal construction occurred, if that date can be ascertained, and if not, to the date when the home was first constructed.

Councilmembers Dickenson and Warden agreed to this amendment.

**ACTION:** On the motion by Councilmembers Dickenson and Warden, to include the amendment as proposed by Councilmember Lieberman, said motion was approved by a roll call vote of 4-1 (Councilmember Mathewson no).

Community Development Director de Melo stated that a formal resolution would be agendized at the next Council meeting to incorporate all of the additional conditions as set forth.

## **NEW BUSINESS**

### **Discussion and Direction on Establishing a Construction Time Limit Ordinance**

Building Official Nolfi noted that there are incidents where building projects lag and are not completed in a timely fashion. Other cities have enacted ordinances setting construction deadlines. He outlined deadline options to consider based on the scope of the project. He noted that in some cities, applicants build fines into their construction costs.

Mayor Feierbach stated she supports such an ordinance for Belmont. She noted there are some projects in Belmont that have not been completed for several years.

Councilmember Dickenson expressed support for having staff work with applicants regarding this issue. He does not want to have to require Planning Commission review of small projects.

Building Official Nolfi recommended limiting the discretion of staff.

Councilmember Lieberman stated that Belmont is different from other cities. He expressed concern that construction limits may preclude someone from doing their own project.

Building Official Nolfi responded that long-term projects are usually the result of a lack of organization and is not usually related to the scope of the project.

Councilmember Mathewson expressed support for a fine structure similar to other cities.

Councilmember Warden expressed support for an ordinance addressing this issue.

**MEETING EXTENSION** at this time, being 11:00 P.M., on a motion by Councilmember Mathewson, seconded by Councilmember Dickenson, the meeting was unanimously extended to 11:30 P.M. on a roll call vote.

#### **MATTERS OF COUNCIL INTEREST/CLARIFICATION**

##### **Discussion Regarding Subcommittee Structure (Lieberman)**

Councilmember Lieberman stated that having a subcommittee structure in place could help efficiencies on a number of issues. He would like to revisit this matter.

Councilmember Dickenson and Mayor Feierbach expressed support.

Councilmember Mathewson stated that the next Council should address this issue.

Councilmember Warden stated that he does not like the subcommittee structure as it is not part of the public process.

City Manager Crist stated that he would bring a future policy report on this topic. He noted there are holes in the current subcommittee structure.

**Salary Report for Belmont City Employees as Reported in the Newspaper (Feierbach)**

Mayor Feierbach stated that she placed this item on the agenda to ensure that everyone was aware of the information as reported.

**ADJOURNMENT** at this time, being 11:05 P.M.

**Terri Cook**

**City Clerk**

Council Meeting Tape Recorded and Videotaped  
Audio Recording 675